

**ALABAMA DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT**

IN THE MATTER OF:	)	
	)	
Limestone County Water and Sewer Authority	)	
	)	
Binford Turner WTP	)	
UNPERMITTED	)	
	)	
North Limestone WTP	)	
UNPERMITTED	)	
	)	
Limestone County, AL	)	CONSENT ORDER NO. XX-XXX-WP
	)	

***PREAMBLE***

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter “the Department”) and the Limestone County Water and Sewer Authority (hereinafter “the Permittee”) pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 through 22-22A-16 (2006 Rplc. Vol.), the Alabama Water Pollution Control Act, Ala. Code §§ 22-22-1 through 22-22-14 (2006 Rplc. Vol.), and the regulations promulgated pursuant thereto, and § 402 of the Federal Water Pollution Control Act, 33 U.S.C. § 1342.

***STIPULATIONS***

1. The Permittee operates the Binford Turner Water Treatment Plant and the North Limestone Water Treatment Plant (hereinafter “WTPs”, both unpermitted facilities located in Limestone County, Alabama.
2. The Department is a duly constituted department of the State of Alabama pursuant to Ala. Code §§ 22-22A-1 through 22-22A-16 (2006 Rplc. Vol.).
3. Pursuant to Ala. Code § 22-22A-4(n) (2006 Rplc. Vol.), the Department is the state agency responsible for the promulgation and enforcement of water pollution control

regulations in accordance with the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 to 1387. In addition, the Department is authorized to administer and enforce the provisions of the Alabama Water Pollution Control Act, Ala. Code §§ 22-22-1 through 22-22-14 (2006 Rplc. Vol.).

4. Ala. Code § 22-22-9(i)(3) (2006 Rpl. Vol.), provides that:

Every person, prior to discharging any new or increased pollution into any waters of the state, shall apply to the [Alabama Department of Environmental Management] in writing for a permit and must obtain such permit before discharging such pollution.

5. The Permittee does not hold a discharge permit from the Alabama Department of Environmental Management for The Binford Turner WTP, but applied for a permit on February 6, 2009. The Permittee neither holds nor has applied for a discharge permit for the North Limestone WTP.

6. The Binford Turner WTP discharges filter backwash water to an unnamed tributary of Swan Creek, a water of the State. The frequency and quantity of this discharge is unknown.

7. The North Limestone WTP discharges filter backwash water to the Elk River, a water of the State. The Department documented during an inspection of the North Limestone WTP on August 10, 2009, that sludge was also being stored along the banks of, and with untreated filtrate discharging to the Elk River. The frequency and quantity of these discharges is unknown.

8. The Permittee violated ADEM Admin. Code r. 335-6-6-.03(1), and the statute provided above by discharging pollutants into waters of the State without first having obtained a valid National Pollutant Discharge Elimination System (hereinafter "NPDES") permit.

### ***CONTENTIONS***

9. Pursuant to Ala. Code § 22-22A-5(18)c (2006 Rplc. Vol.), in determining the amount of any penalty, the Department must give consideration to the seriousness of the

violation, including any irreparable harm to the environment and any threat to the health or safety of the public; the standard of care manifested by the Permittee; the economic benefit that delayed compliance may have conferred upon the Permittee; the nature, extent and degree of success of the Permittee's efforts to minimize or mitigate the effects of such violation upon the environment; the Permittee's history of previous violations; and the ability of the Permittee to pay such penalty. Any civil penalty assessed pursuant to this authority shall not be less than \$100.00 or exceed \$25,000.00 for each violation, provided however, that the total penalty assessed in an order issued by the Department shall not exceed \$250,000.00. Each day that such violation continues shall constitute a separate violation. In arriving at this civil penalty, the Department has considered the following:

A. SERIOUSNESS OF THE VIOLATION AND BASE PENALTY: The Department noted three discrete violations of ADEM Admin. Code chap. 335-6 and the AWPCA. Considering the general nature of each violation, the magnitude and duration of each non-compliant discharge, their effects, if any, on impaired waters, and any available evidence of irreparable harm to the environment or threat to the public, the Department determined the base penalty to be \$10,000.00.

B. THE STANDARD OF CARE: In consideration of this factor, the Department noted that a number of the violations noted above, such as the submittal of permit applications for regulated discharges, were non-technical requirements and easily avoidable.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: The Permittee avoided certain costs associated with permit application and renewal fees, however, the Department has determined that there is no significant economic benefit associated with these avoided costs.

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT: In consideration of this factor, the Department noted that the practice of storing sludge along the banks of the Elk River at the North Limestone WTP was immediately halted and alternative disposal methods along with removal and remediation of the current

storage location were initiated upon discovery by the Permittee. As such, the Department has chosen not to seek a civil penalty for this event.

E. HISTORY OF PREVIOUS VIOLATIONS: The Department is unaware of any previous violations similar to those noted above.

F. THE ABILITY TO PAY: The Permittee has agreed to pay the civil penalty.

G. OTHER FACTORS: This Special Order by Consent is a negotiated settlement and, therefore, the Department has compromised the amount of the penalty the Department believes is warranted in this matter in the spirit of cooperation and desire to resolve this matter amicably, without incurring the unwarranted expense of litigation.

H. The civil penalty is summarized in Attachment 1.

### **ORDER**

THEREFORE, the Permittee, along with the Department, desire to resolve and settle the compliance issues cited above. The Department has carefully considered the facts available to it, and has considered the six penalty factors enumerated in Ala. Code § 22-22A-5(18)c (2006 Rplc. Vol.), as well as the need for timely and effective enforcement, and the Department believes that the following conditions are appropriate to address the violations alleged herein. Therefore, the Department and the Permittee agree to enter into this CONSENT ORDER with the following terms and conditions:

A. The Permittee agrees to pay to the Department a civil penalty in the amount of 10,000.00 in settlement of the violations alleged herein within forty-five days from the effective date of this Consent Order. Failure to pay the civil penalty within forty-five days from the effective date may result in the Department's filing a civil action in the Circuit Court of Montgomery County to recover the civil penalty.

B. The Permittee agrees that all penalties due pursuant to this Consent Order shall be made payable to the Alabama Department of Environmental Management by certified or cashier's check and shall be remitted to:

Office of General Counsel  
Alabama Department of Environmental Management

P.O. Box 301463  
Montgomery, Alabama 36130-1463

C. The Permittee agrees to immediately upon the receipt of this Consent Order, to submit an NPDES permit application for the North Limestone WTP.

D. The Permittee agrees to implement all modifications outlined in the Engineering Report required by the Notice of Violation issued on October 28, 2009, not later than 180 days after the effective date of this Consent Order.

E. The Permittee agrees to upon the Department's request, to prepare and submit detailed Progress Reports to the Department describing the Permittee's progress towards achieving compliance with the items presented in the Compliance Plan.

F. The Permittee agrees to submit a certification to the Department, signed by a professional engineer licensed to practice in the State of Alabama, indicating whether or not the Permittee is in compliance with all requirements of this Order. The certification will be submitted within 180 days after the effective date of this Consent Order.

G. The Permittee agrees to prepare and submit to the Department a complete application for enrollment in the Department's Electronic Environmental Discharge Monitoring Reports (hereinafter "DMRs") Reporting System Program (hereinafter, "E2 Program") for all of its permitted facilities, so that it is received by the Department not later than thirty days after the effective date of this Consent Order. If the Department determines through its review of the submitted application that the submittal is not sufficient for the Permittee to participate in the E2 Program, then the Permittee must modify the application so that it is sufficient. The Permittee shall submit modifications to the application, if required, so that they are received by the Department no later than fourteen days after receipt of the Department's comments. Upon acceptance by the Department into the E2 Program, the Permittee agrees to begin the electronic submittals of DMRs through the E2 Program no later than the 28th day of the month following the first complete monitoring period. The Permittee agrees to fully implement all aspects of the E2 Program including the cessation of federal paper DMR submittals, if applicable, no later than 180 days after acceptance into the E2 Program, unless an extension is

granted in writing by the Department. The Permittee further agrees to abide by all terms, conditions, and limitations of the E2 Program immediately upon acceptance into the E2 Program.

H. The parties agree that this Consent Order shall apply to and be binding upon both parties, their directors, officers, and all persons or entities acting under or for them. Each signatory to this Consent Order certifies that he or she is fully authorized by the party he or she represents to enter into the terms and conditions of this Consent Order, to execute the Consent Order on behalf of the party represented, and to legally bind such party.

I. The parties agree that, subject to the terms of these presents and subject to provisions otherwise provided by statute, this Consent Order is intended to operate as a full resolution of the violations, which are cited in this Consent Order.

J. The Permittee agrees that it is not relieved from any liability if it fails to comply with any provision of this Consent Order.

K. For purposes of this Consent Order only, the Permittee agrees that the Department may properly bring an action to compel compliance with the terms and conditions contained herein in the Circuit Court of Montgomery County. The Permittee also agrees that in any action brought by the Department to compel compliance with the terms of this Agreement, the Permittee shall be limited to the defenses of *Force Majeure*, compliance with this Agreement and physical impossibility. A *Force Majeure* is defined as any event arising from causes that are not foreseeable and that are beyond the reasonable control of the Permittee, including its contractors and consultants, that could not be overcome by due diligence (i.e., causes that could have been overcome or avoided by the exercise of due diligence will not be considered to have been beyond the reasonable control of the Permittee) and which delays or prevents performance by a date required by the Consent Order. Events such as unanticipated or increased costs of performance, changed economic circumstances, normal precipitation events, or failure to obtain federal, state, or local permits shall not constitute *Force Majeure*. Any request for a modification of a deadline must be accompanied by the reasons (including documentation) for each extension and the proposed extension time. This information shall be

submitted to the Department a minimum of ten working days prior to the original anticipated completion date. If the Department, after review of the extension request, finds the work was delayed because of conditions beyond the control and without the fault of the Permittee, the Department may extend the time as justified by the circumstances. The Department may also grant any other additional time extension as justified by the circumstances, but it is not obligated to do so.

L. The Department and the Permittee agree that the sole purpose of this Consent Order is to resolve and dispose of all allegations and contentions stated herein concerning the factual circumstances referenced herein. Should additional facts and circumstances be discovered in the future concerning the facility that would constitute possible violations not addressed in this Consent Order, then such future violations may be addressed by other Orders as may be issued by the Director, by litigation initiated by the Department, or by such other enforcement action as may be appropriate, and the Permittee shall not object to such future orders, litigation or enforcement action based on the issuance of this Consent Order if future orders, litigation or other enforcement action address new matters not raised in this Consent Order.

M. The Department and the Permittee agree that this Consent Order shall be considered final and effective immediately upon signature of all parties. This Consent Order shall not be appealable, and the Permittee does hereby waive any hearing on the terms and conditions of same.

N. The Department and the Permittee agree that this Consent Order shall not affect the Permittee's obligation to comply with any Federal, State, or local laws or regulations.

O. The Department and the Permittee agree that final approval and entry into this Consent Order is subject to the requirement that the Department provide notice of proposed Orders to the public, and that the public have at least thirty days within which to comment on the Consent Order.

P. The Department and the Permittee agree that, should any provision of this Consent Order be declared by a court of competent jurisdiction or by the Environmental

Management Commission to be inconsistent with Federal or State law and therefore unenforceable, the remaining provisions hereof shall remain in full force and effect.

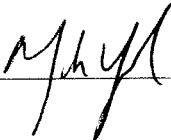
Q. The Department and the Permittee agree that any modifications of this Consent Order must be agreed to in writing signed by both parties.

R. The Department and the Permittee agree that, except as otherwise set forth herein, this Consent Order is not and shall not be interpreted to be a permit or modification of an existing permit under Federal, State or local law, and shall not be construed to waive or relieve the Permittee of its obligations to comply in the future with any permit.

Executed in duplicate, with each part being an original.

**LIMESTONE COUNTY WATER AND  
SEWER AUTHORITY**

**ALABAMA DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT**

By: 

By: \_\_\_\_\_

Its: Chairman

Its: \_\_\_\_\_

Date: 3-11-10

Date: \_\_\_\_\_



# **Attachment 1** **Penalty Calculation Worksheet**

<b>Violation</b>	<b>Number of Violations</b>	<b>Seriousness of Violation &amp; Base Penalty*</b>	<b>Standard of Care*</b>	<b>History of Previous Violations*</b>
Unpermitted discharge of filter backwash from the Binford WTP	1	\$5,000.00	\$2,500.00	
Unpermitted discharge of filter backwash from the N Limestone WTP	1	\$5,000.00	\$2,500.00	
Unpermitted discharge of sludge filtrate from the N Limestone WTP	1	\$0.00		
<b>Totals:</b>	3	\$10,000.00	\$5,000.00	\$0.00
<b>Economic Benefit</b>				<b>\$0.00</b>
<b>Mitigating Factors:</b>				<b>\$0.00</b>
<b>Ability to Pay*:</b>				<b>\$0.00</b>
<b>Other Factors*:</b>				<b>(\$5,000.00)</b>
<b>Final Penalty:</b>				<b>\$10,000.00</b>

\* Refer to the "Findings" of the Order for a description of each penalty factor